



CHAPTER 1

Contracting Overview

This section describes the basic approach to, and the key elements of, the personal services contracting process.

1.1 Procurement Authority

The legal authority for personal service contracts is contained in Chapter 39.29 RCW (see Appendix A). Regulations for implementation are set forth in Chapter 15 of the *State Administrative and Accounting Manual* at the following site: <http://www.ofm.wa.gov/policy/15.htm>

1.2 Competitive Procurement – When You Need It, When You Don’t

*Washington State’s public policy **strongly** favors competition.*

It is always advisable to use the competitive procurement process for personal services. Competitive bidding is a powerful tool for garnering the highest quality professional service from consultants at the most reasonable price. Competition is required for personal service contracts of \$5,000 or more, but in keeping with the state’s public policy favoring competition, use of limited competition is recommended for contracts less than \$5,000 when feasible. You are well advised to use competitive procurement. Here's why:

Increased Participation – A competitive process provides a greater number of firms an opportunity to submit proposals/offers to the state and encourages qualified firms to participate.

Lower Prices – Full and open competition reduces costs since prospective contractors submit their best offers to obtain contracts.

Higher Quality – Consultants who develop proposals in a competitive environment pull together the strongest management and technical teams available.

Innovation – Issuing solicitations to a number of consultants provides the opportunity to select from the most qualified and skilled talent available in the marketplace. An agency may find a consultant's alternative approach to solving a problem more effective than that initially envisioned by staff.

Avoid Favoritism – Unfounded or not, accusations of favoritism can hurt your agency and mar its reputation. Conducting a fair and open competitive process will help avoid any such claims.

Avoid Unsavory Publicity – Even the best-prepared contracts can go awry. When they do, you are in a more defensible position when you have competitively bid your project.

1.3 Defining Personal Services

Personal service contracts provide agencies professional or technical expertise to meet a variety of needs.

Personal services are professional or technical services provided by a consultant (contractor) to accomplish a specific study, project, task, or other work statement. Consultants, who provide personal services, serve state agencies as objective advisers by rendering professional opinions, judgments, or recommendations. A consultant's services may include offering advice based on specialized knowledge, skills and experience, conducting studies, analyzing and evaluating technical issues, and/or providing advice and training to improve managerial and administrative operations. These services may assist an agency in setting policy and/or making decisions. Personal services may range from fairly simple projects such as graphic design to complex and lengthy consulting engagements resulting in development and implementation of complex computer systems.

Personal services can be professional or technical in nature. The services are performed for state agencies by independent consultants whose occupation is the rendering of services such as: accounting, marketing, finance, engineering, architecture, legal services, auditing, organizational development, management services, medical and health services, strategic planning, research and environmental technology. These examples and more are listed in Section 1.5.

While personal services are generally awarded for specific

projects, they may also be awarded for on-going services of a professional or technical nature. The duration of the services does not determine the category of service, e.g., whether personal service or purchased service, rather the type of service is the primary factor to determine the appropriate categorization.

Contracts for personal services may be awarded to individuals, joint ventures, partnerships, corporations, or non-profit organizations. Consultants may provide an independent, unbiased perspective on a problem. Agency management may find value in the service of a firm or individual who will not be influenced by internal factors and who may have a fresh and new viewpoint to contribute. The agency does not have direct supervisory or managerial control over the day-to-day activities of the consultant providing the service.

Agencies often procure personal services from private sources or other public agencies when they do not have the staff or the expertise necessary to perform the service or staff is not available to provide the service. Generally, personal services are used to address a short-term need, resolve a problem, expedite a special project and/or to bring specialized skills for which the state is not permanently staffed. Infrequent and brief use of personal services demonstrates the independent nature of these contracts to the state.

1.4 Negotiated Procurement

Competitive procurement of personal services involves evaluation of proposals based on multiple factors, rather than relying on price as the determinant factor. Agencies determine the weighted value of evaluation criteria and negotiate the contract based on these criteria. This is a different type of procurement process than opening sealed bids at a public bid opening, and selecting the lowest cost, responsive bidder.

Personal services are often more subjective in nature and, therefore, more difficult to specify than services or products procured through a sealed bid process. Intangible properties such as human effort and impartial advice may not be evaluated in the same way as supplies or equipment. Evaluation criteria for personal service procurements may

include quality, reputation, experience and technical capabilities among the evaluation criteria. Cost or price is an element in evaluation but the selection need not be driven solely by price. The solicitation document must clearly set forth the evaluation criteria.

1.5 Other Types of State Procurements

The state's purchasing authority is organized into eight major categories, one of which is personal services. The other seven categories are listed below and explained further in the following sections.

- Goods and Purchased Services
- Information Technology Equipment and Services
- Public Works (including Engineering and Architecture)
- Highway Design and Construction
- Printing Services
- Insurance Bonds
- Space/Buildings

1.5.1 Goods and Purchased Services, Chapter 43.19 RCW

It is important to correctly identify the type of procurement in order to follow the appropriate rules.

Procurement of many state goods and purchased services is the statutory responsibility of the Department of General Administration, Office of State Procurement (OSP) under Chapter 43.19 RCW and WAC 236-48 and 236-49. OSP oversees the purchasing and material control practices of all state agencies and serves as the purchasing agent for most agencies. In addition, OSP issues the Washington Purchasing Manual that contains both required procedures and guidelines that apply to the purchase of goods and purchased services. The document also delegates purchase authority of certain goods and services to agencies to make some of their own purchases, according to state procedures (found at the following site: www.ga.wa.gov/pca/regulat.htm.)

Refer to the Purchasing Manual for further information on competitive bidding for these goods and services. At the time of issuance of this Guide, the competitive thresholds are:

- Informal Competition - \$3,000 to \$42,300
- Formal Competition - \$42,301 +

These dollar thresholds are reevaluated each biennium, so it is advisable that you check the Washington Purchasing Manual prior to making a purchase under this authority.

In most instances the distinction between a "purchased" service or a "personal" service is clear. However, on occasion the service must be closely evaluated to make the determination. Since the statutory requirements for procurement of purchased services are quite different from those for personal services, it is important to define the service accurately and early in the process. Examples of purchased and personal services are given later in this section and a chart follows to assist in making the distinction. It should also be noted that if a service is merely incidental to purchase of a good, the procurement is still to be processed as a commodity with the services included.

If a question still arises regarding the appropriate classification, contact either the Office of Financial Management (OFM), Contract Office, at (360) 725-5260, (360) 725-5259, or (360) 725-5258, or the Department of General Administration, Office of State Procurement, at (360) 902-7400 for clarification.

DISTINCTIONS BETWEEN PERSONAL & PURCHASED SERVICES

Personal Service Characteristics	Purchased Service Characteristics
<ul style="list-style-type: none">• Services are professional or technical in nature and meet more specialized needs. Work is predominantly intellectual and varied.• Work is independent from the day-to-day control of the agency; consultant maintains control of work methods.• Work requires regular exercise of judgment, discretion, and decision-making; involves providing advice, opinions or recommendations; may have policy-implications for agency; often addresses management-level issues.• May require advanced or specialized knowledge, or expertise gained over an extensive period of time in a specialized field of experience.• Work may be original and creative in character in a recognized field of endeavor, the result of which may depend primarily on the individual's invention, imagination or talent.	<ul style="list-style-type: none">• Services are more repetitive, routine or mechanical in nature; following established or standardized procedures as contrasted with customary and regular exercise of discretion or independent judgment.• Services contribute to the day-to-day business operations of the agency, rather than the management or policy side of the agency, and may meet more general needs of the agency.• Services generally involving completion of an assigned task, rather than an entire project.• Decision-making and analysis, if required, is more routine or perfunctory in nature.• Services that are generally performed based upon agency direction.

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Personal Service Characteristics	Purchased Service Characteristics
<ul style="list-style-type: none"> Consultant generally assumes risk of loss if the requirements are not satisfied. 	

NOTE: The fact that a service possesses one of the above characteristics is not necessarily conclusive to a determination of personal or purchased service, but rather the service should generally fit the applicable criteria.

EXAMPLES OF PERSONAL & PURCHASED SERVICES

The list below is a guide to assist agencies in determining whether a service is generally considered a personal service or a purchased service. Always carefully review the proposed services being required under the contract to make the final determination.

For example, a contract for conference coordination could be either personal or purchased service, depending upon the responsibilities of the contractor. If the contractor is independently responsible for organizing, implementing and coordinating the conference with only minimal guidance from the agency, the contract would be a personal service. If the contractor is following prescribed instructions and the agency has primary responsibility for coordination of the conference, the contract would be designated as a purchased service contract.

Examples of OFM Personal Services	Examples of GA Purchased Services
Accounting services Actuarial services Analysis and assessment of processes, programs, fiscal impact, compliance, systems, etc. Appraisal services Art work, original (services creating the art work) Audio/video media productions (design, development and/or oversight of) Auditing services Business analysis and assessment services Business process re-engineering brochures, pamphlets, maps, signs, posters, annual reports, etc.) Communications (including design, development or oversight of audio/video productions, Conference and trade show management and coordination Consultation on programs, plans, projects, systems, etc.	Advertising in newspapers, magazines, billboards, etc. Ambulance/emergency medical tech. service Air/bus, vehicle charter/rental service Auctioning service Audiometric testing Banking Services (routine, transaction based) Boiler testing/water treatment service Bookkeeping service (routine, transaction based) Building alarm systems, service and repair Check collection service Clothing, textile fabrication repair service Commercial laundry service, dry cleaning, etc. Communications systems installation, servicing and repair Conference Registration Assistance Court reporting and transcription services Credit card service Debt collection service

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Examples of OFM Personal Services	Examples of GA Purchased Services
<p>Counseling employees</p> <p>Curriculum development</p> <p>Economic analysis and consultation</p> <p>Environmental Planning/Technology/Studies (except when part of an architectural/engineering project)</p> <p>Evaluation of processes, programs, projects, systems, etc.</p> <p>Executive recruitment</p> <p>Expert witness services for litigation/testimony</p> <p>Facilitation for groups, projects, retreats</p> <p>Facilities planning/coordination</p> <p>Feasibility studies (except when part of an architectural/engineering project)</p> <p>Financial services</p> <p>Fund raising</p> <p>Grant writing</p> <p>Graphic design (creative or original in nature)</p> <p>Guest speakers (includes honoraria)</p> <p>Investigations (personnel related, etc.)</p> <p>Investment advisors and management</p> <p>Labor negotiations and labor relations services</p> <p>Legal and paralegal services Legislative liaison services</p> <p>Lobbying services</p> <p>Management consulting Marketing services, including identifying market opportunities, conduct of marketing programs, planning, promotion, market research surveys, etc.</p> <p>Mediation, negotiation and arbitration services</p> <p>Medical and psychological services, including evaluation and consultative services (For blood draws, physicals, blood pressure checks, etc., see Health Screening under purchased services.)</p> <p>Needs assessment (except when part of an architectural/engineering project)</p> <p>Operational assessments</p> <p>Organization development</p> <p>Outreach services for programs</p> <p>Peer review</p> <p>Planning services (except when part of an architectural/engineering project)</p> <p>Policy development and recommendations</p> <p>Productivity improvement</p> <p>Program development, assessment, implementation, coordination, evaluation, etc.</p> <p>Public involvement services and strategies</p> <p>Publication development (See Communications)</p> <p>Quality assurance/quality control services</p> <p>Recommendations on processes, products, projects, systems, etc.</p>	<p>Delivery/courier service</p> <p>Document storage, duplication, retrieval, review and destruction service</p> <p>Drug testing and screening (standard tests)</p> <p>Engraving service</p> <p>Environmental monitoring: noise level, safety, hazardous gas detection, radiation monitoring service, etc. (using standardized processes)</p> <p>Equipment installation, preventive maintenance, inspection, calibration and repair</p> <p>Equipment rental services</p> <p>Exam testing administration and scoring service</p> <p>Firefighting/suppression service</p> <p>Food preparation, vending and catering services</p> <p>Health screening, basic diagnostic (wellness, blood pressure monitoring, blood draw, etc.)</p> <p>Herbicide application service</p> <p>Household goods packing, storage, transportation service</p> <p>HVAC system maintenance service</p> <p>Interpretive services: written/oral/sign language</p> <p>Inventory service</p> <p>Janitorial service, carpet cleaning, window washing</p> <p>Laboratory testing and analysis (standard tests only)</p> <p>Land clearing/debris removal service (when not using heavy equipment)</p> <p>Landscaping--tree planting, grooming service, lawn mowing (except when part of an architectural/engineering project)</p> <p>Language translation service</p> <p>Lay witness (called to testify in a court case)</p> <p>Linen rental service</p> <p>Marine equipment inspection, certification and repair</p> <p>Medical equipment rental or repair service (wheel chairs, walkers, etc.) Includes measurements, adjustments and modifications to meet patient needs</p> <p>Metal/pipe/wiring detection service</p> <p>Office furnishings installation, refurbishment and repair service</p> <p>Package inspection and crating</p> <p>Painting service (unless public works)</p> <p>Paper shredding</p> <p>Parking lot sweeping/snow removal service</p> <p>Pest/weed control service</p> <p>Photographic/micrographic processing and delivering, includes aerial and ground photography (if analysis is included, then personal service)</p> <p>Printing/duplicating service</p>

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Examples of OFM Personal Services	Examples of GA Purchased Services
Recruitment, executive. Research services — social, environmental, technical, etc. Retreat and workshop planning, conduct, coordination, etc. Scientific and related technical services Strategic planning Speech and report writing Statistical analysis Studies, development and conduct Surveys (including development of instrument, conduct and analysis of results — if conduct only of standard survey instrument, would be purchased service) Temporary employment service for professional services: architects, engineers, registered nurses, doctors, etc. Trade development services Training — when it is: (a) offered to specific categories or classes of employees; (b) offered to all or most agency employees six times or less in a fiscal year	Process serving Property management (rent collection, property maintenance, etc.) Recycling/disposal/litter pickup service Security/armored car services Shop welding/metal fabrication service Steam cleaning, high pressure washing, parts cleaning service Studio photography service (does not include portrait painting) Telephone interview service (conduct of survey using prescribed survey instrument) Temporary employment service (clerical support, dictation, word processing, bookkeeping, etc.) Test fishing service Towing service Training — when it is offered on a recurring basis (more than six times per fiscal year) to all or most employees. Also includes existing satellite down-link courses and teleconferencing training services Travel service — air, surface, water Tree topping (when not using heavy equipment) Utility services: garbage, fire protection, heat and sewer, cable TV, power, water, etc. Vehicle inspection, lubricating and repair services Videotaping and recording service Warehouse dry/cold storage rental service Weather information service

1.5.2 Information Technology Equipment and Services, Chapter 43.105 RCW

The Washington State Information Services Board (ISB) has the power and duty to develop standards governing the acquisition and disposition of equipment, proprietary software and purchased services, and confidentiality of computerized data. It also has the power and duty to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services.

Agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. See <http://www.wa.gov/dis/portfolio> for

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the documents referenced in this section. For the latest information regarding competitive acquisition of IT goods and purchased services, see Appendix A of the IT Investment Standards also located at this web site.

The ISB delegated certain duties and responsibilities to the Department of Information Services (DIS) related to the acquisition of IT resources. In addition, RCW 43.105.052 directs DIS to make available information services to state agencies and local governments and public benefit nonprofit corporations on a full cost-recovery basis. Under this authority, DIS may establish IT equipment and services and software master contracts for statewide use. DIS also has statutory responsibility for telecommunications equipment, installation, answering and paging systems, and their corresponding service, and maintenance. These types of purchases are subject to the competitive requirements of Chapter 43.105 RCW and to ISB policy.

RCW 43.105.020 defines “purchased services” under the authority of the ISB and DIS to mean services provided by a vendor to accomplish routine, continuing, and necessary functions. This term includes, but is not limited to, services acquired for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing. See the chart at the end of this section for more examples.

Some IT purchases require ISB or DIS approval. Such approval must be obtained prior to release of any solicitation and prior to conducting the acquisition.

ISB approval is required under one or more of the following circumstances:

- The investment is placed under ISB oversight by legislative proviso.
- The ISB places the investment under its oversight.
- The investment was rated oversight level 3 or is part of a project that was rated oversight level 3, per the oversight matrix in the ISB IT Investment Standards.
- ISB approval may be required if the investment cost exceeds the agency director’s delegated authority.

DIS approval is required under one or more of the following

circumstances:

- The investment cost is more than the agency director's delegated authority.
- The acquisition process to be used is a technology assessment.
- The investment was rated oversight level 2 or is part of a project that was rated oversight level 2, per the oversight matrix in the ISB IT Investment Standards.
- The investment is exempted from delegated authority, even if the investment cost is within the agency director's delegated authority. The ISB Investment Policy lists the types of IT investments that are exempted from delegated authority.

When the acquisition is for IT personal services, in addition to complying with the *Information Technology Investment Policy*, the agency must procure the personal services in accordance with Chapter 39.29 RCW and, when the contract is for \$20,000 or more, file the contract with OFM. The ISB policy sets the minimum procedural requirements for protests of all IT purchases. Therefore, IT solicitations for personal services should include the ISB protest language.

Some IT contracts may have elements of both "personal services" as defined in Chapter 39.29 RCW and "purchased services" as defined herein. In these situations, the agency should determine the primary purpose for the contract. If the contract's primary purpose is determined to be for a personal service, then, in addition to following the ISB rules, the agency must also follow the competitive procurement and filing requirements established by Chapter 39.29 RCW and set forth in this booklet. If the primary purpose for the contract is determined to be for a purchased service, then follow the competitive requirements set forth by the ISB in the *Information Technology Investment Policy*.

In general, programming and related technical services are classified as IT "purchased services" when:

1. More established or standardized procedures are being followed or more routine, repetitive or mechanical work is being accomplished.
2. Analysis and decision-making are more general in nature and support of the project, rather than at a level that determines the course or direction of the project.

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3. The work does not require rendering significant independent judgment.

When programming services are part of a project that is primarily for design or development of an information system, then the contract is designated as a personal service and procured under Chapter 39.29 RCW.

Examples of IT services are listed at the end of this section to assist in determining whether services should be procured under the authority of Chapter 43.105 RCW as IT purchased services or pursuant to both authorities, Chapter 43.105 RCW and Chapter 39.29 RCW as personal services. Again, when referring to the following list of services, remember that the elements of the scope of work of the proposed contract must be examined to determine its appropriate designation. Do not focus exclusively on the title of the service.

Examples of IT Personal Services	Examples of IT Purchased Services
Feasibility studies Needs assessment—including consultation with the user as to needs and requirements Development of project definition and scope requirements Business and technology planning Acquisition planning and technology assessment Project management System development and implementation, integration and migration Systems analysis, design, and implementation Quality assurance services Disaster recovery planning System architecture (analysis and design of complex business and technology requirements) Business process re-engineering Performance assessment Technical writing	Routine programming Assisting with network operations and support Technology support including: troubleshooting, basic analysis, hardware and software technical support and production services support Security services Language and software conversion Testing system and components Hardware and software installation and maintenance System or equipment maintenance and repair Data entry services Operation of a physical plant Assistance with production turnover IT “commodity-like” services (buying a service that does not include hiring an individual to perform the service), including but not limited to digital certificates, long distance services, toll-free services, research and advisory subscription services, electronic payment services, encryption services and on-line training IT Multimedia services, when supplied by or through DIS, including but not limited to video production, satellite broadcasting, video digitizing, webcasting. Internet programming services and website maintenance Standard IT training related to hardware or software in use by an agency.

1.5.3 Public Works, Including Engineering and Architectural Services, RCW 28B.10.350, 39.04, 39.80 and 43.19.450

The term “public works” includes construction, repair or alteration of buildings or other real property and usually requires professional design and a building permit. RCW 28B.10.50 states that when the estimated cost of such building, construction, renovation, remodeling, or demolition equals or exceeds the sum of \$25,000, the project is classified as a public works.

The Department of General Administration (GA), Division of Engineering and Architectural Services (E&A) is responsible for design and construction of all state-owned facilities, except those owned by the four-year universities, Department of Transportation and the natural resource agencies.

Engineering and architectural services procured by GA/E&A use a competitive process referred to as consultant selection. For projects estimated to be less than \$100,000 for basic services, a consultant selection committee makes a selection from firms on file. For larger projects, those \$100,000 for basic services or more, an advertisement is published in the Daily Journal of Commerce. Selection of the architectural and/or engineering firm is based on qualifications of the firm. Once selection is made, negotiations begin to document the terms of agreement and to negotiate cost based on the state fee schedule. The architect/engineer begins the project by developing the design and specifications and generally participates on the project through completion of construction.

Construction contracts are also procured through competitive bidding. For contracts under \$200,000, a small works roster may be used. For contracts of \$200,000 or more, the project is advertised, bid documents issued and public bid openings held. Award is made to the lowest cost, responsive, responsible bidder.

Engineering and architectural services fall under the broad definition of personal services; however, they are subject to the competitive and other requirements of Chapter 39.80 RCW. Although these services are exempt from competitive procurement and filing requirements of the personal service contract statute, agencies are required per RCW 39.80.070 to submit quarterly reports to OFM on any engineering and architectural agreements and addenda awarded during the quarter.

For more information on these contracts, contact the Department

of General Administration, Division of Engineering and Architecture, at (360) 902-7272.

1.5.4 Highway Design and Construction, Chapters 39.80 and 47.28 RCW

Contracts for highway construction are subject to the statutory requirements of Chapter 47.28 RCW and for architectural and engineering (A/E) services, Chapter 39.80 RCW. Contracts for architectural and engineering services are processed through the Consultant Selection Office in the Department of Transportation, Environmental and Engineering Service Center. Selection of the A/E firm is based on qualifications of the firm. Once selection is made, negotiations begin to document the terms of agreement and costs or fees are then negotiated. For additional information on A/E contracts, contact the Consultant Selection Office at (360) 705-7102.

Construction projects are also procured through competitive bidding. All contractors must be pre-qualified prior to bid submission. For contracts of \$100,000 or more, the project is advertised, bid documents issued and public bid openings held. Award is made to the lowest cost, responsive bidder. For information on construction contracts, contact the Pre-Contract Administration Manager at (360) 705-7017.

1.5.5 Printing Services, Chapter 43.78 RCW

In general, the Department of Printing is the mandatory supplier for printing services. It produces a high volume of printed materials for state agencies with about 55 percent of its volume contracted out or bid to private industry. Long-term contracts are maintained for printed forms and envelopes.

For more information you may contact the State Printer at (360) 753-6820.

1.5.6 Insurance and Bonds, RCW 43.19.1935

Purchase of all insurance, bonds and notary public commissions for state agencies is the responsibility of the Office of Financial Management, Risk Management Division. The Division issues a publication entitled, "Contracts: Transferring and Financing Risk," which assists in determining the amount of insurance required for contractors to carry out state projects. The manual is available on the Office of Financial Management (OFM) web page at <http://www.ofm.wa.gov/rmd/risk.htm> or can be ordered in hard copy by calling (360) 902-7301.

The Risk Management Division also conducts risk assessments to help agencies identify exposure areas and advises agencies on ways to reduce or eliminate claims. They also answer specific or general questions on insurance requirements.

1.5.7 Space/Buildings

The purchase, lease or rental of privately owned space and/or buildings on private property and alteration or repair is the responsibility of the Department of General Administration, Real Estate Division. For further information, you may call (360) 902-7373.

1.6 Standards of Ethics and Conduct

State employees involved in contracting need to be particularly aware of the specific ethics rules and prohibitions that apply to them.

State employees contracting on behalf of the state are to maintain strict ethical standards and take caution to avoid any real or apparent conflict of interest situations. Chapter 42.52 RCW, "Ethics in Public Service," effective January 1, 1995, applies to all state employees in all three branches of state government.

The ethics law is designed to protect state employees from conflicts of interest or from engaging in activities where their interests or loyalties could be divided or may be questioned. Employees should familiarize themselves with the applicable statutes and all agency policies whenever they are involved in any purchases on behalf of the state.

Specific ethics prohibitions that can affect employees when contracting are:

- Having a personal or financial interest that is in conflict with the proper discharge of state duties, including the transaction of state business with an entity in which a state employee has an interest.
- Assisting other persons in transactions with the state when a matter has been within his/her official responsibility within the preceding two years.
- Disclosing confidential information, for personal benefit or gain, or for the benefit or gain of others.
- Accepting employment that might reasonably require the disclosure of confidential information obtained through state employment.
- Using one's official state position to obtain special

privileges or exemptions or to grant special privileges to others.

- Accepting outside employment or compensation if circumstances would lead a reasonable person to believe it is a reward for performance or non-performance of state duties.
- Accepting any gift, if circumstances create the impression that one's vote, judgment or action could be affected, or that staff are being rewarded for the performance or nonperformance of an official duty or if the item is of a value that exceeds statutory limits.

Separate ethics boards are established for the legislative and executive branches with authority to educate, render advisory opinions, investigate, conduct hearings, issue subpoenas, seek judicial enforcement of subpoenas, conduct hearings, impose penalties, and recommend suspension and dismissal of violators. Agencies should contact their Assistant Attorney General or the appropriate ethics board for further information on the ethics law.

1.7 Contracting with Current or Former State Employees

Specific restrictions apply to contracting with current or former state employees. Agencies should familiarize themselves with the requirements of chapter 42.52 RCW prior to entering into any type of contract. A brief summary of the restrictions follows and should be used as a guide. This summary is not a comprehensive explanation of all the requirements of the ethics law.

NOTE: These prohibitions apply to any type of service contracting with the state, not just personal service contracting.

Current State Employees

Current state employees may contract with outside entities or with other state agencies when all of the following conditions apply:

1. The contract is bona fide and actually performed.
2. The performance or administration of a contract or grant is not within the course of the officers' or employees' official duties, or under his/her official supervision.

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3. Applicable laws or rules governing outside employment for the state officer or state employee do not prohibit the performance of the contract or grant.
4. The contract or grant is not performed for or compensated by any person from whom the officer or employee is prohibited from accepting a gift.
5. The contract or grant is not expressly created or authorized by the officer or employee in his/her official capacity.
6. The contract or grant would not require unauthorized disclosure of confidential information.

Ethics Board Determination

If a current state employee enters into a contract with a state agency and the contract is competitively bid and the only bid received is from the state employee; or, if the contract is not competitively bid, the state employee must receive the prior approval of the appropriate ethics board prior to execution of the contract. If approved, the state employee must file the contract with the board within 30 days of contract approval.

OFM will not process this type of contract filing with a state employee until the approval from the appropriate ethics board has been received.

Former State Employees

Contract Restriction: The contract restriction applies only to those state officers and state employees who were involved in the negotiation or administration of agency contracts. The restriction under RCW 42.52.080(1) prohibits a former state officer or state employee from accepting employment or receiving compensation from an employer if:

- The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that [the post-state] employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration; **and**,
- Such a contract or contracts have a total value of more than ten thousand dollars; **and**,

- The duties of the employment with the [post-state] employer or the activities for which compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts.

A former state employee may not accept employment or compensation from an employer within one year of leaving state employment if for two years prior to leaving the state, the employee negotiated one or more state contracts with the prospective employer; the value of the contract or contracts was more than \$10,000; and, duties for the new employer include implementing or fulfilling contracts negotiated or administered while a state employee.

Two-Year or Beneficial Interest Restriction: The two-year beneficial interest restriction does not prohibit a former state officer or state employee from doing business with his or her former state agency for a period of two years. The restriction applies only to the acquisition of a beneficial interest in a contract or grant. Under this provision, a former state officer or state employee may not:

Within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

Continuing Restriction: Several of the post-state employment restrictions are continuing. That is, there is no statutorily defined time limit that determines when these restrictions end. There are continuing restrictions on the following activities by former state officers and state employees:

- Accepting an offer of [post-state] employment or receiving compensation from a [post-state] employer if the officer or employee knows or has reason to believe that the offer or employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during state employment.

- Accepting an offer of [post-state] employment or receiving compensation from a [post-state] employer if circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of a duty by the officer or employee during state employment.
- Participating, at any time subsequent to state employment, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment.

1.8 Training on Personal Service Contracts

Contract training is mandatory before an employee manages or executes a personal service contract.

Training on personal service contracts is required for those who execute or manage personal service contracts. Those who have not completed contract training cannot execute or manage these contracts until they have completed the training. Based on legislative concerns about the State's contracting practices, the 2002 Washington State Legislature passed Senate Bill 5629 that mandated the contract training requirement effective January 1, 2004.

The OFM Contract Office offers ongoing and special contract training classes in order that staff can meet these requirements. The class schedule for each quarter is available online at <http://swfs.ofm.wa.gov/swt/schedule.asp#Contracts>. For information regarding an agency-specific class, call (360) 725-5259 or email OFM.Contracting@ofm.wa.gov.

The OFM training covers the topics in this *Guide to Personal Service Contracting*. Those who have taken OFM's half-day or full-day personal service contract training since July 1999 have satisfied the requirement. OFM has records of those who attended training since that date.

Staff who execute contracts are those who sign contracts. Staff who manage contracts are those who have responsibility for the day-to-day activities involved in contracting. These activities may include providing technical assistance to contractors, monitoring contractor activities, and reviewing and approving invoices. Managers who execute but don't manage contracts may satisfy this requirement by attending the Contracting for Mid-Level Managers training or the Contract Training for the Executive Manager offered by OFM or equivalent training approved in writing by OFM.

Agencies may provide their own personal service contract training and are encouraged to do so. However, the course must be approved in writing in advance by OFM. If agencies provide training, names of staff who attended the training must be reported to OFM.

Any request for an employee to be exempt from this training requirement must be submitted to OFM in writing. OFM must grant approval to the agency prior to the employee executing or managing contracts. The exemption is to be considered a temporary waiver only for an individual. The employee granted the exemption will attend contract training as soon as feasible. Multiple requests for exemption for an individual will not be approved. State agencies are responsible to ensure that staff attend the training after receiving the waiver.

1.9 Risk-Based Audits

Senate Bill 5629, passed by the 2002 Legislature, requires OFM to conduct risk-based audits of the personal service contracting practices of state agencies to ensure agency compliance with the *Guide to Personal Service Contracting*. OFM selects the agencies and conducts the audits, based on funding provided. The audit results are forwarded to the Governor, the appropriate standing committees of the Legislature, and the Joint Legislative Audit and Review Committee.

1.10 Audit and Investigative Findings

Senate Bill 5629, passed by the 2002 Legislature, requires the State Auditor's Office (SAO) and the Attorney General's Office (AGO) to provide an annual report of agency personal service contract audit and investigative findings, enforcement actions, and the status of agency resolution. The SAO and AGO will submit the report to the Governor and the Legislative policy and fiscal committees by November 30th of each year.

The audit findings in this report are those issued by the SAO and are not related to the risk-based audits conducted by OFM.

1.11 Frequently Asked Questions and Answers

Q1: How long does it take to conduct a formal competitive procurement, e.g. personal services of \$20,000 or greater?

A: The time can range from six weeks to six months, depending on the complexity. A simple procurement, which does not involve much research or planning on the part of the respondents, may take four weeks, plus two weeks if OFM filing with a ten-working day filing period is required. Most personal service procurements in this dollar range require at least eight weeks to complete.

Q2: What type of newspaper must be used to comply with the requirement that competitive contracts of \$20,000 or more be advertised?

A: Advertising in a major daily newspaper in Washington State meets the minimum requirements of OFM Policy 15.20.10. Washington State newspapers that satisfy this requirement are the Daily Journal of Commerce, the Seattle Times, Seattle P.I., the News Tribune, and the Wall Street Journal. Agencies may also advertise in one or more minority newspapers (see Chapter 3, Section 3.3, for a list) and a newspaper in eastern Washington, such as the Spokesman Review (Spokane) or the Yakima Herald.

Q3: How long after advertising may the procurement document be issued?

A: A reasonable amount of time, generally as designated in the advertisement, must be allowed to enable prospective bidders an opportunity to express interest in receiving the solicitation, generally one week is recommended. The solicitation document should be issued to all requesters at the same time, insofar as possible, to allow bidders an equal amount of time to respond to the procurement. Late requests for the solicitation document should be honored, but the late requests should not be reason to delay the due date.

Q4: How much time should be allowed for the bidders to respond to the procurement?

A: A reasonable amount of time must be allowed for response, depending on the complexity of the information requested in the procurement. Two weeks is generally the minimum for a simple Request for

Qualifications/Quotations. An average amount of time for responses is one month after the solicitation document is issued. This allows time to hold a pre-proposal conference and to issue an addendum of responses to questions.

Q5: What criteria are used to evaluate Requests for Proposals (RFPs)?

A: Evaluation is generally divided into three parts: technical, management, and cost. The technical section describes the consultant's approach and solution to the project. The management section provides information about the consultant's experience and qualifications. The cost section explains the consultant's pricing structure. Criteria may also include:

- Understanding of the project
- Quality of work plan (technical solutions)
- Ability and capacity of the bidder and staff
- Experience with similar projects
- Project team structure and internal controls
- Ability to perform within timeframe and to adhere to schedule
- References

Q6: When competitive procurement is required, may a contract be awarded based on a Request for Information (RFI)?

A: No. The RFI merely seeks information and may not be the basis of a contract award.

Q7: Does a personal service contract have to be in writing?

A: Yes. A written document specifying the agreement between the agency and the contractor must be prepared for all contracted personal services. Identification of the parties, scope of services, compensation and payment, period of performance, and signatures of responsible parties are examples of required elements. Numerous other elements should also be included in contract documents to provide additional legal protection to the state. See OFM Policy 15.10.45.

Q8: Are there ways to write a contract to ensure the contractor's legal status as an independent contractor

rather than as an employee?

A: Yes. For example, a contractor is not required to work established hours (e.g., 8 to 5); a contractor is independent from control of the agency as to how work is performed but rather is responsible for “results”; the agency does not control the contractor’s behavior or financial activities; the contractor may earn a profit or loss; contractor establishes the order and sequence of the work; cannot “quit” without liability; etc.

Q9: What is the difference between a personal service and purchased service contract?

A: Personal services are professional or technical services provided by a consultant to accomplish a specific study, task or other work statement. Purchased services are provided by a vendor to accomplish routine, continuing and necessary functions. Personal services are performed independently from the day-to-day control of the agency. Purchased services are usually more routine or mechanical in nature. See Section 1.5.1 of this guide for more information.

Q10: For purposes of determining whether the \$5,000 sole source filing threshold or the \$20,000 sole source filing threshold has been reached by individual contractors, agencies must add or aggregate all sole source personal service contracts awarded to a contractor by the agency in a fiscal year period. Are competitively procured personal services also aggregated for this determination?

A: No. Only sole source contracts awarded during a fiscal year to a single contractor are aggregated, to determine whether these thresholds have been reached for filing sole source contracts. See OFM Policy 15.30.30, for more information.

Q11: When a contract must be filed at least 10 working days prior to the proposed contract start date, how are those days counted?

A: Start counting the first working day after the filing is submitted to OFM and count 10 business days. (Weekends and state holidays are not included in the count.) The contract may start, at the earliest, on the 10th working day after the date of filing. The contract may also start later than the 10th day subject, of course, to OFM review/approval.

Q12: Institutions of higher education file only state-funded contracts. Are federal funds considered “state funds” for purposes of determining whether or not these rules apply?

A: For the purposes of this statute, “state funds” are defined as funds appropriated by the Washington State Legislature or allotted by the agency, OFM Policy 15.30.10(g). If the federal funds are appropriated or allotted per the definition, then federally funded contracts could be subject to filing.

Q13: Notice of sole source contracts in the amount of \$20,000 or more must be advertised in a statewide or regional newspaper. Are there exceptions to this requirement?

A: Yes. Exceptions to state advertising requirements are possible when:

- Selection of the contractor is based on a personal accomplishment or characteristic, e.g., guest speaker, performer or artist.
- Funding source mandates with whom the agency contracts.
- OFM determines that advertising is inappropriate, based on written agency request. See OFM Policy 15.30.30.

Q14: What is the penalty for late filing?

A: The penalty for late filing, when levied, is \$300 (civil penalty) for the responsible state officer or employee. A consultant who knowingly violates the personal service contract statute Chapter 39.29 RCW is subject to the greater of \$300 or 25 percent of the amount of the contract. See OFM Policy 15.10.35.

Q15: When should an agency process a contract amendment rather than a new contract?

A: An amendment may be issued when the nature or scope of the work is relatively unchanged and if the contract allows for the amendment. A new contract should be issued when the essential character of the work has changed, or if there is a substantial change to the scope of work, duration, or cost and/or where there is a logical break in service. See OFM Policy 15.20.90.

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Q16: Can a contract include more than one type of service? For example, can it contain both personal services and purchased services?

A: Yes. A single contract may have elements of more than one type of service. In this instance, the contract can generally be processed using the procedure for the predominate type of service. (Exceptions are possible.)

Q17: Are larger contract filings scrutinized more at OFM?

A: Yes. Personal service contracts of \$100,000 or more receive review by budget analysts in the OFM Budget Division, as well as review in the OFM Contract Office. The budget analysts review whether:

- There is an allotment for the funds,
- The expenditure is consistent with the Agency's budget,
- There is a connection with budget assumptions.